THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.18495 OF 2006

Dated 01-05-2007

Between:

M/s NTC (APKKM) Ltd (A Govt of India undertaking)
III Floor, Nanjappa Mansion K.H.Road, Bangalore and
with a Unit at Renigunta by name
M/s Tirupati Cotton Mills …Petitioner

And

The Commercial Tax Officer …Respondent

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.18495 OF 2006

O R D E R *(Per the Hon'ble Sri Justice Bilal Nazki):*

Counter has been filed. Heard learned counsel for the parties and with their consent, the writ petition is being disposed of at this stage.

The petitioner is a unit of National Textile Corporation and is a Central Government Undertaking and is engaged in manufacturing of textiles. One of the main activities of the National Textile Corporation had been to undertake and manage the private textile industries, under the Sick Textile Undertakings (Nationalization) Act, 1974, which fell sick under the Sick Textile Undertakings Act, 1972. One of the companies the National Textile Corporation took over was the erstwhile M/s Tirupati Cotton Mills. It appears that the said Company fell in arrears on account of sales tax for the assessment years 1972-73 and 1973-74 and an assessment had been made against the said M/s Tirupati Cotton Mills and finally amounts were recovered as arrears of tax for the years 1972-73 and 1973-74.

The Sick Textile Undertakings (Nationalization) Act, 1974 (for short "the Act"), by which the erstwhile M/s Tirupati Cotton Mills was taken over, provided under Section 5 (3) (c) that no

liability of any sick textile undertaking or any owner thereof for the contravention, before the appointed day, of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation. The appointed day was defined under Section 2(1)(a) of the Act as the first day of April, 1974.

The case of the petitioner is that the liabilities incurred by the erstwhile Tirupati Textile Mills for the years 1972-73 and 1973-74 could not be fastened to the petitioner in view of the bar created under Section 5 (3) (c) of the Act.

On the other hand, learned Special Standing Counsel for Commercial Taxes submits that the liability was crystallized only on 15-04-1977 and 21-02-1977 when the assessments were made. This argument cannot be accepted because assessments can take years. What Section 5(3) (c) of the Act meant was when the liability arose and not when the assessment with regard to the liability was made. The liability under the sales tax arises as soon as a dealer receives the sales tax from the customer. Therefore, it cannot be accepted that the liability arose in 1977 when the assessments were made. The liability arose only in the years 1972-73 and 1973-74, when the tax was received by the erstwhile M/s Tirupati Cotton Mills-assessee.

In this view of the matter, we allow the writ petition and set aside the notice dated 18-01-2006 as far as the demand with regard to the arrears of sales tax due for the assessment years 1972-73 and 1973-74 are concerned. As the amounts have already been collected, the petitioner shall move for refund of the amounts, in accordance with law. However, this order will not deprive the

respondent from recovering the arrears of tax due for the assessment years 1972-73 and 1973-74 from the assessee-the erstwhile M/s Tirupati Cotton Mills. No order as to costs.

(Bilal Nazki,J)

Dated 1st May, 2007

(Nooty Ramamohana Rao,J)

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